

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of

Closed Captioning of Video Programming

Telecommunications for the Deaf, Inc.
Petition for Rulemaking

CG Docket No. 05-231

To: The Commission

JOINT COMMENTS OF:

**AZN TELEVISION
CASINO & GAMING TELEVISION
COMCAST SPORTSNET (MID-ATLANTIC)
COMCAST SPORTSNET (PHILADELPHIA)
E! ENTERTAINMENT TELEVISION
G4 – VIDEOGAME TV
THE GOLF CHANNEL
INSPIRATIONAL LIFE TELEVISION
THE INSPIRATION NETWORK
OUTDOOR LIFE NETWORK
STYLE NETWORK
TV ONE**

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SUMMARY

The Networks submitting these Comments are twelve non-broadcast programming networks that are broadly representative of the multichannel programming industry as a whole, and whose experience demonstrates the substantial commitment of, and high level of success achieved by, program networks in captioning their programming. The Networks unequivocally support the goal of increasing the quality, accuracy and reliability of closed captions. However, the Networks believe that the particular changes to the closed captioning rules proposed by Telecommunications for the Deaf, Inc. ("TDI") are unnecessary and unworkable, and would burden program networks with requirements and costs that would not improve the quality or accuracy of captioning.

TDI paints a dismal – and inaccurate – picture of the state of closed captioning in the multichannel programming industry: widespread noncompliance with the rules by many networks and grudging, minimal compliance by others. These assertions are off the mark. All of the Networks are in compliance with the Commission's requirements for captioning, and some of the Networks go *well beyond* the Commission's hourly benchmarks. The Networks consider closed captions to be an integral part of the service package they deliver to the public. The Networks' most important business partners, their distributors, are responsible for compliance with the captioning rules, and the Networks cannot jeopardize these valuable business relationships. Moreover, the Networks understand the enormous value that captions add for their viewers, including not only the 10 percent of the viewing public that has a form of hearing disability, but also other viewers who benefit from, and use, captions. Today, captioning is the norm rather than the exception, and viewers expect ubiquitous, high-quality captioning.

The Commission should not impose non-technical quality standards. The Networks have strong market incentives to deliver high-quality captions. The Networks each have invested many millions of dollars to ensure that customers associate the Networks with top-level production quality, and captions are an integral component of each Network's overall brand and image. The Networks have implemented a number of quality control standards and processes to ensure accuracy and quality, including some or all of the following:

- Using captioners who are familiar with the network's particular programming;
- Creating in-house captioning departments;
- Selecting service providers on the basis of quality and reputation, not just price;
- Providing "prep sheets" to steno-captioners to reduce the error rate;
- Developing systems for proof-reading captions to ensure accuracy;
- Executing contracts with service providers that require captions to be of high quality and free of defects;
- Using non-verbal descriptions and different color captions for different speakers;
- Monitoring steno-captioners for accuracy;
- Editing and synchronizing steno-captions associated with live programming before that programming is made ready for repeat viewing; and
- Generally using "off line" pop-on captions whenever possible.

Non-technical quality standards also would be unworkable because a single standard cannot possibly be applied to the wide variety of programming being captioned today. Mandatory standards would represent an unwarranted and unprecedented intrusion into the production process for television programming, and any such standards would pose an enormous burden on networks, particularly smaller networks.

The Commission also should reject TDI's request for technical quality standards. Distributors are already required to pass through captions included in programming. While technical difficulties may have been more frequent in the early years of captioning, today, in the Networks' experience, captioning is a reliable process that presents relatively few technical problems. Active and continuous monitoring of closed captions is a routine part of the Networks' technical operations, and as such, additional regulations are neither warranted nor appropriate.

The Commission's current complaint procedures should not be modified. The rules provide a reasonable timeframe to allow distributors and/or networks to investigate and respond to complaints. Although most complaints can be resolved quickly, there are instances in which a significant amount of time may be necessary to investigate and respond to a complaint. There have been a very few informal complaints submitted to the Networks, and *not even one* complaint has been filed with the Commission against any of the Networks. When they have received informal complaints, the Networks promptly responded to, and fully addressed, their viewers' concerns without regulatory intervention. The Commission should maintain the rules' current timeframe for response and emphasis on the informal resolution of captioning issues.

The Commission should reject TDI's request for a "system of punitive penalties" that includes a base forfeiture amount of \$8,000 per hour of uncaptioned programming. TDI's request is premised on an assumption – widespread noncompliance – that is flat wrong. The Commission already has the ability to impose forfeitures where appropriate, and there is no need to establish a base forfeiture amount because violations of Section 79.1 are not frequently recurring. The Commission should retain its discretion and flexibility for future adjudications, rather than adopt a one-size-fits-all formula of financial penalties. Finally, the base forfeiture amount proposed by TDI is grossly excessive, could have a crippling financial impact on networks for even a minor violation, and is legally indefensible.

Finally, the Commission should not require distributors to file periodic compliance reports. TDI proposes a costly and administratively cumbersome "solution" to a problem that does not exist. Consumers can, and do, contact networks to inquire about compliance with the rules. And although compliance may have been somewhat difficult to ascertain during the transitional period, starting in January 2006, nearly all programming will be required to be captioned, and the process of ascertaining compliance with the rules will be a far simpler matter. The Networks already certify their compliance with the captioning rules to distributors on a quarterly basis, and this process has been efficient and effective for distributors, networks and the public.

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AZN Television (“AZN”), Casino & Gaming Television (“CGTV”), Comcast SportsNet (Mid-Atlantic) (“CSN-MA”), Comcast SportsNet (Philadelphia) (“CSN-PHL”), E! Entertainment Television (E!), G4 – videogame tv (“G4”), The Golf Channel (“Golf”), Inspirational Life Television (“iLifetv”), The Inspiration Network (“INSP”), Outdoor Life Network (“OLN”), Style Network (“Style”) and TV One (collectively referred to as “the Networks”),¹ submit these comments in response to the Notice of

¹ The corporate entities of the Networks include: International Networks LLC; CGTV Media Group, Inc. d/b/a Casino & Gaming Television; Comcast SportsNet Mid-Atlantic, L.P. d/b/a Comcast SportsNet; Comcast SportsNet Philadelphia, L.P. d/b/a Comcast SportsNet; E!

Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“Commission”) on July 14, 2005 in this proceeding.

The Networks unequivocally support the goal of increasing the quality, accuracy and reliability of captions distributed on multichannel networks such as theirs, and are committed to doing so. However, the Networks believe that the particular changes to the Commission’s captioning rules proposed by Telecommunications for the Deaf, Inc. and other parties (collectively, “TDI”)² are unnecessary and unworkable, would burden program networks with requirements and costs that would not improve the quality of captioning, and would sap resources that otherwise could be used by networks to expand their captioning efforts and enhance the programming they provide to their viewers.

I. INTRODUCTION

The Networks represent a wide array of non-broadcast programming networks – from a widely distributed general entertainment network, to regional sports networks, to a less widely distributed foreign language network, to a nascent network that has yet to launch in the United States.³ Some of the Networks present predominantly live programming, while others offer a large amount of pre-recorded programming. Some provide programming that falls within exemptions to the Commission’s captioning rules, while others offer primarily new, English-language programming that must be 100 percent captioned as of January 1, 2006. What these networks have in common, however, is their

Entertainment Television, Inc. d/b/a E! Entertainment Television and The Style Network; G4 Media, Inc.; The Golf Channel, Inc.; The Inspirational Network, Inc. d/b/a The Inspiration Networks (INSP and iLifetv); Outdoor Life Network, LLC and TV One, LLC.

² These parties include those that filed a Petition for Rulemaking with the Commission on July 23, 2004 (“TDI Petition”): National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network.

³ A synopsis of each of the Networks is provided in Attachment A.

responsibility for providing their multichannel video program distributors (“MVPDs”) with captioned programming that meets the requirements of the Commission’s rules,⁴ and their uniform commitment to providing closed captioning and providing it at the same high level of quality that they demand of their video and audio signals.

Since the rules were adopted in 1997, the Networks have been successful in providing many thousands of hours of extremely high quality captioning. Each of the launched Networks has met or exceeded the Commission’s captioning requirements. Indeed, several of the Networks already caption all or nearly all of their English-language programming, notwithstanding the fact that this is not required until 2006. In addition, the Networks have devoted personnel to ensuring that captioning is done and done well. Some have invested in software and equipment and have hired staff to caption their programming at the Networks’ production facilities. Others have carefully selected outside captioning companies based on the company’s knowledge and understanding of the Network’s particular programming genres, have worked with these companies in advance of production to create a dictionary of terms to ensure accuracy, and have monitored the performance of individual steno-captioners. Significantly, *none of the Networks has been the subject of a formal complaint*, and even collectively the Networks have received only several informal complaints or inquiries over the past eight years regarding the many thousand of hours of programming that they have captioned, each of which has been resolved swiftly.

Given the enormous efforts and investment of these networks, and their impressive record of successful, high quality captioning, the Networks do not understand the basis, and

⁴ While the Commission’s closed captioning rules require programming distributors to ensure that programming is captioned, the Commission understood when it adopted the rules that distributors would pass that obligation on to programming networks through their affiliation agreements. In fact, each of the Networks’ contractually binding affiliation agreements requires the network to caption its programming at the levels established by the Commission.

see no need, for TDI's proposed changes to the Commission's captioning rules. The proposed changes would not increase the amount, or improve the quality, of captioning. Instead, the proposals on the table would do nothing more than increase the administrative burden imposed on programming networks, many of which already have devoted all that they can to captioning. For these and the following reasons, the Networks respectfully request the Commission to reject TDI's proposed amendments to its captioning rules.

A. Identification of the Networks

The Networks are twelve non-broadcast programming networks that are broadly representative of the multichannel programming industry as a whole, and whose experience demonstrates the substantial commitment of, and high level of success achieved by, program networks in captioning their programming.

Several of the Networks are principally focused on live sports programming. **CSN-PHL** and **CSN-MA** are regional sports networks that serve the Philadelphia area and the Washington/Baltimore area, respectively, and present live coverage of hundreds of sports events each year.⁵ **Golf** provides live coverage of professional golf tours around the world, instructional programming, as well as original shows on the game and the golf lifestyle. **OLN** brings the outdoor adventure and action sports lifestyle to its viewers through exclusive programming, including coverage of *The Tour de France* and National Hockey League ("NHL") games. These networks each face the challenge of providing high-quality closed captioning of live sporting events, a particularly difficult genre because

⁵ There are two other regional sports networks recently launched by Comcast that serve the Chicago area (launched in October 2004) and the Sacramento area (launched in November 2004). As "new networks," these networks currently are exempt from a regulatory obligation to caption, however both networks ensure that any captions including in their acquired programs are included in the signals transmitted to distributors.

of the fast pace of dialogue and frequent use of athletes' names and terminology that is unique to that particular sport.

E! is an entertainment news network that is distributed to approximately 86 million subscribers, ranking it among the top networks in total distribution. **E!**'s programming is largely pre-recorded, and consists of celebrity interviews, talk shows, news and behind-the-scenes specials. However, **E!** also provides live coverage of the entertainment industry's awards shows, which are steno-captioned. **Style**, a channel dedicated to fashion, design, interior décor and urban lifestyles, launched in 1998 as a brand extension of **E!**. **Style**'s programming is predominantly pre-recorded. Programs shown on **E!** and **Style** are captioned by an in-house captioning department.

G4 is dedicated to video games and the gaming lifestyle. It presents predominantly original programming focusing on the latest information about electronic games, "making of" documentaries, tips and tricks, competitions and special events. **G4**'s programming is largely pre-recorded, but it also presents one hour of live programming each day. **G4** captions *100 percent* of its programming, and has been doing so since May 2004, nearly two years in advance of the regulatory obligation for full captioning.

TV One launched in January 2004 and features a broad range of lifestyle and entertainment offerings designed to entertain, inform and inspire a diverse audience of African-Americans. As a new network, **TV One** is not required to caption any of its programming until January 2008. However, **TV One** plans to caption a significant portion of its programming (at least 25 percent) starting in the fourth quarter of 2006, more than a year in advance of its regulatory obligation to do so.

AZN is a niche network dedicated to serving the Asian-American community. It presents original programming produced in the United States, as well as foreign-language dramas, movies, anime, and music programming. Although the network is small, reaching only 12.5 million subscribers, and has limited resources, closed captions and English-language subtitles are an important part of its programming package, to which it devotes considerable resources.

INSP and iLifetv are sister networks that target viewers who care about inspirational values. INSP blends ministry programs with family-oriented movies, dramas, music, children's shows and specials, while iLifetv distributes life-enriching educational entertainment programming. The networks consider closed captions to be a vital way to spread their inspirational message to the largest possible audience.

CGTV is in the final stages of development, recently began distributing its programming through an affiliate in Canada, and is planned for U.S. launch in the near future. The network will provide entertainment, news, information and educational information about the gaming industry and gaming events. Although CGTV will be exempt from any captioning requirement for four years after launch, the network plans to caption a portion of its programming within two years of launch.

B. The Networks Are Exceeding the Commission's Captioning Requirements and Providing High-Quality Captioning to Their Viewers

In its Petition, TDI paints a dismal – and inaccurate – picture of the state of closed captioning in the multichannel programming industry. Relying on only a handful of examples, TDI sweepingly claims that television viewers are experiencing “numerous problems with closed captioning,” including “pervasive” technical problems and

“widespread problems” with non-technical quality.⁶ TDI also asserts that “many” programming providers fail to supply the required levels of captioned programming, and suggests that other providers achieve only grudging, minimal compliance with the rules.⁷ However, in the Networks’ experience, reality is far different.

The Networks consider closed captions to be an integral and highly important part of the service package they deliver to their distributors and to the public. The Networks’ most important business partners, their distributors, are responsible for ensuring compliance with the closed captioning rules. The Networks understand that failing to caption the requisite amounts of programming, or providing poor quality captions, would reflect poorly on their distributors and could jeopardize these valuable business relationships. Moreover, the Networks have committed contractually, in their affiliate agreements with distributors, to meet the Commission’s regulatory requirements for captioning. Clearly, both as a matter of contractual compliance and preserving the goodwill of their distributors, the Networks cannot afford to not comply with these obligations.

The Networks also understand the value that captions add for their viewers. As TDI noted in its Petition, there are 28 million Americans who are deaf, hard of hearing, late-deafened or deaf-blind.⁸ Beyond the regulatory and contractual obligations to caption, the Networks cannot afford to ignore or underserve nearly *10 percent* of the television viewing public. In addition, captions are an important way to reach not only the hearing impaired, but also those viewers who use captioning for other reasons, including audiences in commercial establishments. As the Commission previously

⁶ TDI Petition at 1, 2 and 10.

⁷ TDI Petition at 18.

⁸ TDI Petition at 3-4.

found, “[c]aptioning also can help non-hearing disabled viewers understand the audio portion of television programs in noisy locations such as airports, hotel lobbies, waiting rooms, public exercise facilities, restaurants and bars.”⁹ In particular, the networks offering coverage of sporting events, such as **CSN-PHL**, **CSN-MA**, **Golf** and **OLN**, consider viewers in restaurants, bars, exercise facilities and airports to be an important part of their target audience, and captions are an essential ingredient for reaching these viewers. In addition, the Networks recognize, as has the Commission, that closed captions provide benefits for others groups of viewers, including children learning to read, persons learning English as a second language and illiterate adults, and “can help people understand dialogue in quiet areas where they may need to lower or turn off the volume on the television set.”¹⁰

Much has changed since the Commission enacted its captioning rules in 1997. At that time, television programming was rarely captioned, such captioning was largely funded by grants from the Department of Education, and only a limited amount of “high value” programming, such as the NCAA basketball tournament, was captioned. Today, captioning is the norm rather than the exception, and consumer expectations have grown as a result. Television viewers, whether hearing impaired or not, now expect that television programs will be routinely and competently captioned. In other words, as the Commission predicted in 1997, captioning has become “an integral part of programming,”¹¹ and one that consumers have come to expect.

⁹ *Closed Captioning and Video Description*, Report, 11 FCC Rcd. 19214 at ¶ 37 (1996) (“1996 Report to Congress”).

¹⁰ *Id.* at ¶¶ 34-37.

¹¹ *Closed Captioning and Video Description*, Report and Order, 13 FCC Rcd. 3272 at ¶ 223 (1997) (“Report and Order”).

For all these reasons, there can be little doubt that TDI's suggestions of widespread non-compliance by program networks and grudging minimal compliance by others are off the mark. MVPDs demand compliance with the Commission's captioning rules, and more importantly, viewers have come to expect ubiquitous, high-quality captioning. As demonstrated below, the Networks are delivering precisely that to their viewers.

a. The Networks Are Meeting or Exceeding the Commission's Captioning Requirements

All of the Networks are in compliance with the Commission's requirements for captioning, and some of the Networks go *well beyond* the Commission's hourly benchmarks. For example, since May 2004 -- nearly two years before it was required to do so -- **G4** has been captioning *100 percent* of its programming. It does so to serve the hearing impaired community, but also because captions enhance the Network's brand as a high-technology information source and because much of its core audience, video gamers, enjoys watching **G4's** programming with the sound off, and captions on.

CSN-MA, CSN-PHL and **OLN** caption all of their telecasts of live professional sports events in order to make this high-value programming available to the largest number of viewers -- including both the hearing-impaired and the hearing.¹² Each of these networks consistently exceeds the quarterly requirements for captioned programming, and **CSN-MA** now captions approximately *90 percent* of its programming, an amount far in excess of the current hourly requirement, in order to meet viewers' expectations and to reach not only the hearing-impaired but also viewers in gyms, restaurants, bars and airports.

¹² This includes games of the Philadelphia Phillies, the Philadelphia Flyers, the Philadelphia Seventy-Sixers, the Baltimore Orioles, the Washington Wizards and the Washington Capitals.

Since mid-2005, **E!** and **Style** have been captioning *20 hours* of programming each day, effectively meeting the 2006 requirement six months in advance, and for the past three years, **E!** and **Style** have consistently delivered captioned programming well in excess of the regulatory requirement. Similarly, approximately *95 percent* of **Golf's** programming is currently captioned, and **Golf** consistently has captioned well in excess of the Commission's hourly requirements. **Golf** exceeded the Commission's benchmarks not just to prepare for the transition deadline but because a significant portion of its audience consists of persons with hearing disabilities, and also because the provision of closed captioning reflects positively on the network.

AZN expects to voluntarily spend more than two percent of its gross revenues on captioning, in excess of its regulatory obligation,¹³ in both 2005 and 2006. In addition, **AZN** voluntarily spends an even greater amount to prepare English-language subtitles for much of its foreign-language programming, which includes programming in Mandarin, Cantonese, Korean, Tagalog (Filipino), Japanese, Vietnamese, Hindi, Thai and Cambodian. As the Commission has found, subtitles "make programming that might otherwise not be accessible available to persons with hearing disabilities" and, thus, it has allowed subtitles to count toward a channel's captioning benchmarks.¹⁴ **AZN** exceeds its regulatory obligation to provide captioned programming in order to meet its viewers' expectations and because it views the provision of captioned programming to both hearing and hearing-impaired viewers to be a sound business practice.

INSP consistently has captioned its programming well in excess of the Commission's hourly benchmarks. The network considers closed captions to be an

¹³ See 47 C.F.R. § 79.1(d)(11).

¹⁴ See Report and Order at ¶ 83

important part of its programming package because a significant portion of INSP's viewers are elderly, and because captions make INSP's inspirational programming accessible to the largest possible audience.

Each of the Networks has made significant investments to ensure the delivery of high-quality captions. For example, six years ago, sister networks **E!** and **Style** established an in-house closed captioning department, which is now staffed with *eight full-time employees*. Similarly, **Golf** has hired three employees who are devoted full-time to captioning the network's programming to its exacting standards, and has invested *over \$300,000* in hardware and software to create a custom, state-of-the-art captioning system. In 2006, **INSP** and **iLifetv** will have an in-house captioning department staffed with *five full-time employees*. And many of the Networks, such as **CSN-PHL**, **CSN-MA**, **INSP**, **iLifetv**, **Golf**, **E!** and **G4** have invested in closed captioning encoders and dedicated communications facilities to make possible the insertion of steno-captions into their live programs.

b. The Networks Have Adopted Effective Measures to Ensure High Quality Captions

In their efforts to ensure that closed captions are accurate and of high-quality, each of the Networks has undertaken a number of measures, including some or all of the following:

- Using captioners who are familiar with the network's particular programming genre and terminology commonly used in the dialogue;
- Creating in-house captioning departments;
- Selecting third-party service providers on the basis of quality and reputation, not just price;

- Providing “prep sheets” – consisting of common terms, phrases and names appearing in the programming – to steno-captioners in advance to reduce the error rate;
- Developing systems for proof-reading captions to ensure accuracy;
- Executing contracts with third-party service providers that require captions to be of high quality and free of defects;
- Using non-verbal descriptions and different color captions for different speakers;
- Regularly monitoring steno-captioners for accuracy, and requiring an annual report of accuracy statistics;
- Editing and synchronizing steno-captions associated with live programming before that programming is made ready for repeat viewing (roll-up captions are replaced with pop-on captions, and any spelling, punctuation and grammar errors are eliminated);
- Requesting that certain steno-captioners be replaced with better-qualified captioners; and
- Generally using “off line” pop-on captions whenever possible, rather than real-time steno-captioning.

We are now less than two months away from an important milestone for closed captioning. Effective January 1, 2006, all new, English-language programming will be required to be captioned, unless the programming or the provider is subject to one of the narrow exemptions set forth in the rules. Programming providers, including the Networks, have used the phase-in period to prepare for full captioning, and as discussed below, the Networks have “ironed out the wrinkles” in the complex process of creating and distributing closed captioned programming. And captioning will continue to improve over time, as the captioning processes and technologies are further refined and improved.

Although captioning is not yet a 100 percent perfect process, the Networks can unequivocally state that they have been meeting -- and in many cases *exceeding* -- their captioning obligations, and are prepared to do so in the future without additional

regulations being imposed. Congress' goal in enacting Section 713 of the Communications Act¹⁵ – “to ensure that all Americans ultimately have access to video services and programs”¹⁶ – is being met, and the Networks are playing an important role in meeting Congress' objective by delivering high-quality closed captioned programming to the public.

III. THE COMMISSION SHOULD NOT MODIFY ITS CAPTIONING RULES

As discussed in detail below, the various rule changes proposed by TDI would not improve the quality or reliability of closed captions. Rather, the rule changes simply would add an unnecessary layer of administrative compliance, draining resources away from increasing the amount and overall quality of captioning, as well as from investments that the Networks otherwise could devote to the creation and acquisition of diverse, highly desirable programming. Therefore, the Networks, which represent the full spectrum of non-broadcast networks, oppose the burdensome and unnecessary changes to the Commission's closed captioning rules proposed by TDI.

A. The Commission Should Not Impose Non-technical Quality Standards

The Commission has asked whether, as proposed by TDI, it should establish “non-technical quality standards” for closed captioning, which would include accuracy of transcription, spelling, grammar, punctuation, placement and identification of non-verbal sounds, pop-on or roll-up style.¹⁷ The answer is an unequivocal no. Program networks have strong market incentives to deliver high-quality captions, and have quality control processes in place to ensure that they do so. Any such government-imposed standards

¹⁵ 47 U.S.C. § 613.

¹⁶ H.R. Report 104-458, 104th Cong., 2d Sess. at 183-84 (1996).

¹⁷ NPRM at ¶ 13.

would be unworkable and would unnecessarily add to the already considerable cost of providing captions.

1. The Networks Have Strong Market Incentives to Provide High-Quality Closed Captions to Their Viewers

In the highly competitive and fragmented world of television, programming networks simply cannot afford to deliver anything less than exceptional quality. Indeed, the Networks each have worked diligently to ensure that customers and MVPDs associate their Networks with top-level production quality. Anything displayed in connection with their programming – video, audio, graphics and closed captions alike – reflects directly on the Networks. Captioning appears on the same television screen as the video and audio portions of the each of the Networks' channels. Each of the Networks has invested many millions of dollars in its program "brand," and none can afford to provide a quality of captioning that would in any way jeopardize or undermine this investment. Thus, captions are an integral component of each Network's overall brand and image.

Consider the strong market incentives that drive **Golf** to deliver high-quality captions. **Golf's** research indicates that its audience is more mature, affluent and technologically sophisticated than the average television viewer. **Golf** believes that more than 10 percent of its audience may include persons with hearing disabilities, and that a substantial portion of non-hearing disabled viewers also utilize closed captions to view its programming. It is not surprising then that **Golf** has developed, at great expense, a custom, state-of-the-art captioning system and employs a full-time staff of in-house captioners who are highly knowledgeable about the game of golf. These efforts allow **Golf** to meet its self-imposed, rigorous standards for both its in-house captioning efforts, as well as its third-party steno-captioning service provider. As the following examples

demonstrate, **Golf** clearly “goes the extra mile” to ensure accuracy and to enhance its viewers’ experience.

- **Golf’s** in-house captioners, as well as its Director of International Operations, carefully monitor the quality and accuracy of live steno-captioning and pre-recorded programming.
- For “off line” captions prepared for most pre-recorded programs, which are prepared in-house, **Golf’s** objective is 100 percent accuracy for spelling, punctuation and grammar.
- **Golf’s** in-house captioners have extensive knowledge about the game of golf and golf related terminology. **Golf** uses pop-on captions for its programming captioned in-house, and carefully places captions on the screen to assure ease of viewing.
- **Golf** uses non-verbal descriptions and different color captions for different speakers.
- **Golf** regularly monitors its third-party steno-captioning provider for accuracy, and requires an annual report of accuracy statistics.
- Finally, **Golf’s** captioning department edits and synchronizes steno-captions associated with live programming before that programming is made ready for repeat viewing. Roll-up captions are replaced with pop-on captions, and any spelling, punctuation and grammar errors are eliminated.

Golf takes these measures not just because it is under a regulatory obligation to do so. Instead, **Golf** knows that closed captions are an integral part of its programming, and

are held by its viewers to the same exacting standards as every other aspect of **Golf's** programming efforts.

Indeed, in 1997, the Commission rejected a call for non-technical quality standards, reasoning that

video programming providers have an incentive to ensure that the programming they deliver to consumers is of a high overall quality. Because captioning will now be mandatory, it will become an integral part of programming. As with other aspects of programming (*e.g.*, the audio and video), programming providers have a strong incentive to maintain the overall quality of the programs they deliver to consumers, including captions of comparable quality.¹⁸

As demonstrated by the efforts employed by **Golf** and the other Networks, the Commission's analysis in 1997 was correct, and TDI has failed to demonstrate otherwise.

2. TDI's Claims About Non-technical Quality Are Unsupported And Lack Merit

Golf's captioning efforts stand in stark contrast to TDI's assertions that "the quality of captioning generally has not improved" and there are "widespread problems with non-technical captioning quality."¹⁹ Indeed, TDI provides little empirical evidence in support of its claims, citing only *two* instances of flawed captions that occurred during the millions of hours of captioned television programming that have been presented since the rules' adoption. Those instances involved the misspelling of 14 and 10 words during two programs aired by a cable network in 2003.²⁰ Although unfortunate, the misspelling of a handful of words in that example certainly did not render the captioning useless or inaccessible to persons with hearing disabilities.²¹ More importantly, TDI cannot

¹⁸ Report and Order at ¶ 223 (footnotes omitted).

¹⁹ TDI Petition at 35, 37.

²⁰ See TDI Petition at 37-38 and Exhibits B-8 and B-9.

²¹ Assuming an average rate of dialogue (180 words per minute), and 44 minutes of programming per hour, the error rate for these programs is quite low: 0.177 percent and 0.126

reasonably claim that two isolated instances of less-than-perfect captioning provide a substantive basis for its sweeping claims and broad proposed amendments.

3. The Networks Have Adopted Standards and Employed Measures to Ensure High Quality Captions

The Networks have implemented quality control standards and processes to ensure that captions are of high quality and accuracy. For example, six years ago, **E!** and **Style** created an in-house captioning department in order to allow the networks to create high-quality captions in a cost-effective manner. This department now includes *eight full-time employees*. The networks have an effective quality-control process in place. For each program, captions are prepared by one employee, and then checked for quality and accuracy by another. **E!** and **Style** use only pop-on captions, except for live programs and, occasionally, programs that are subject to tight production schedules, which are steno-captioned in real-time. For its live coverage awards shows (typically six to eight each year), **E!** gives its steno-captioners a list of the award nominees in advance in order to reduce the error rate.

Until recently, **INSP** and **iLifetv** used a third-party captioning services provider, which guaranteed an accuracy rate of 98 percent. For 2006, **INSP** and **iLifetv** will bring this process in-house, in order to control costs and maintain high standards of accuracy. The networks have purchased captioning hardware and software and now are hiring staff. The department will be staffed by *five full-time employees*, and will employ a quality-control process that includes proof-reading by a separate individual.

CSN-PHL, **CSN-MA** and **OLN** have implemented several quality-control measures to ensure that their live sporting events are captioned with a high degree of

percent, respectively.

accuracy. For example, each network selected its third-party captioning service provider specifically because it demonstrated a high-degree of competence with the captioning of sports programming, a particularly challenging type of programming to caption because of the fast pace of dialogue and frequent use of sports related terminology. **CSN-MA** further requires that its captioning service provider use only a small number of steno-captioners to caption its games, so that these individuals can acquire a strong understanding of the sports vocabulary used by announcers. **CSN-MA** further provides its service provider with team rosters, to assist the steno-captioners with the spelling of players' names. This practice is particularly helpful for **CSN-MA's** coverage of, for example, Washington Capitals hockey games, because the NHL has many foreign-born players with names that otherwise would be difficult to caption accurately. Similarly, **G4** provides outside captioning services with background information about its programming to allow its captioners to become familiar with the high-technology related terminology and dialogue common in its programming.

As a smaller network with limited resources, **AZN** employs two third-party services to provide captions. These providers were selected on the basis of reputation and quality, not just price. **AZN's** quality control department reviews the captions (and subtitles) before its programming is aired, and **AZN** has found that both of its service providers consistently do an excellent job.

The Networks recognize that captions are an integral part of their programming, and they are "going the extra mile" to ensure captions are accurate, complete and reflective of the investment the Networks have made in their programming. In addition, as the Commission anticipated in 1997, the Networks' contracts with captioning agencies

generally require that captions have a high level of accuracy. For instance, the Networks' contracts set forth the standards that outside captioning services must meet, including for example, that the captioning must be free of defects, of high quality, provided "in accordance with normal industry workmanship and performance standards" or produced with "an accuracy of 98.5 percent or greater on the captioned programming, as measured by standard industry captioning systems."

In addition, if a captioning provider fails to deliver high-quality captions, that provider can, and will, be replaced. As an example, **Golf** insists that its steno-captioning provider use only captioners who are familiar with golf and with golf lingo in particular. On two occasions, **Golf's** monitoring of steno-captioning revealed an unacceptable error level, and it requested a solution. The service provider replaced the particular steno-captioners, and the problem was rectified.

In 1997, the Commission predicted that video programming providers would "establish quality standards and quality controls for the non-technical aspects of captioning through their arrangements with captioning suppliers or as part of the requirements of their programming contracts and licensing agreements" and that "this approach will result in high quality captions comparable to the level of quality of other aspects of programming such as the audio and video."²² Again, as illustrated by the Networks' examples, the Commission's predictions, on which the current rules were based, were sound, and the rules should not be changed.

4. Non-technical Quality Standards Would be Unworkable

Tellingly, in its Petition, TDI does not propose any specific non-technical quality standards. Instead, without more, TDI asks the Commission to "adopt standards for

²² Report and Order at ¶ 222 (footnotes omitted).

proper spelling, grammar, timing, accuracy, and placement.”²³ As the Commission found in 1997, “it would be difficult to establish standards in this area. While we requested specifics regarding any proposed standards ... including [the] means for monitoring and enforcement, commenters provide[d] only general guidelines without the details we requested.”²⁴ TDI’s failure to propose standards, or a means for monitoring and enforcement, reflects the fact that a single standard or enforcement mechanism cannot possibly be applied to the wide variety of programming being captioned by today’s networks.

For instance, accuracy levels vary dramatically between real-time steno-captioning and “off line” captions, which are created and added after a program has been recorded and before it is aired. Real-time steno-captions are created by human beings. These individuals are well trained and highly qualified, and they strive for perfection. However, occasionally they make mistakes in transcribing a word, particularly when there are multiple speakers, speakers with different dialects or a rapid pace of dialogue.²⁵ Although “off line” captions generally are more accurate than real-time steno-captioning, the process of creating “off line” captions typically requires several days to complete. As a result, in some cases, the only possible captioning method for pre-recorded programs (*i.e.*, those under a tight production schedule) is steno-captioning. It is not feasible for rules to effectively regulate this fine distinction. And any non-technical quality standard that essentially bars the use of steno-captioning for pre-recorded programming could

²³ TDI Petition at 38.

²⁴ Report and Order at ¶ 224.

²⁵ The rate of dialogue in programs that commonly are steno-captioned (sports, news and public affairs programs) typically averages 180 words per minute, and may, for brief periods, exceed 250 words per minute. See *Questions About Captions and Subtitling*, Accessible Media Industry Coalition, available at www.amicoalition.org/faq.htm.

have the unintended effect of prohibiting the display of an enormous amount of programming that is produced on a tight production schedule.

Furthermore, it would be very difficult, if not impossible, for the Commission to establish a single standard that would be appropriate for all networks. For instance, an established network such as **Golf** has the resources, staff and market incentives to take “extra” measures to improve its captions, such as using different color fonts for different speakers. But it certainly would not be appropriate for the Commission to impose such a requirement on all networks, particularly those with more limited resources, such as **AZN**, which has chosen instead to use its resources to deliver English-language subtitles on its foreign-language programming. Instead, the Commission should allow the Networks to continue to make decisions about the kind of captioning that works best for their particular programming and audience, and avoid regulatory micromanagement of this process.

Moreover, any kind of mandatory non-technical quality standards established by the Commission would necessarily be tied to today’s captioning technology. As a result, rules in this area likely would tend to stifle innovation and the development of new captioning technologies, such as speech recognition software, which may hold the long-term promise of providing more accurate and cost-effective captioning.

5. Non-technical Quality Standards Would Pose an Enormous Burden, Particularly on Smaller, Less Established Networks

In 1997, the Commission also expressed concern about “the administrative burden that would be imposed on video programming providers and the Commission if millions of hours of television programming must be monitored to make sure that no more than a

specified percentage of the words are wrong, misspelled or missing.”²⁶ That concern is no less apt today. Unquestionably, the process of checking and double-checking closed captions to ensure compliance with an FCC-mandated standard for accuracy would be an enormously cumbersome and labor-intensive process. While each of the Networks strives to attain the highest possible quality of captioning, given the complex nature of the service and the human element inherent in captioning, absolute perfection simply cannot be achieved all of the time by every network. Moreover, given the Networks’ incentives and strong record of near perfection, there is no demonstrable need for such regulatory standards.

Any incremental improvement in the quality of captioning that might result from a government-mandated standard would be miniscule and would pale in comparison to the enormous additional costs imposed. These additional costs would be most acutely felt by smaller, less established networks. For example, if the Commission were to impose non-technical quality standards, **AZN**, which has *never* received a complaint about its captions, estimates that its costs would increase by at least 50 percent because (1) it would need to hire additional staff in its quality-control department and (2) it expects that it would see price increases from third-party service providers having to ensure compliance with higher standards. In that event, **AZN**, which already spends more than two percent of its gross revenues on captioning expenses (and even more on subtitles), would have to reduce some of its captioning or use funds for captioning that currently are budgeted for the creation and acquisition of programming. Moreover, any additional costs incurred by networks to comply with heightened regulation would come

²⁶ Report and Order at ¶ 224.

at a time when some networks will experience dramatic increases in their captioning expenditures because of the full captioning requirement that soon will become effective.

In short, TDI has presented scant evidence that non-technical quality standards are necessary. The Networks cannot afford to deliver anything less than a very high-quality product, and as a result, have implemented standards and processes to ensure that captions are of high quality and accuracy. Any non-technical quality standards established by the Commission would be unworkable and would pose an enormous burden on program networks, particularly smaller and less-established networks. For all of these reasons, the Commission should reject TDI's call for non-technical quality standards.

B. The Commission Should Not Impose Technical Quality Standards

The Commission's "pass through" rule for captions currently requires that "[a]ll video programming distributors shall deliver all programming received from the video programming owner or other origination source containing closed captioning to receiving television households with the original closed captioning data intact."²⁷ The Commission requested comment on the need for the adoption of further measures and procedures, in addition to the "pass through" rule, to prevent technical problems from occurring, and asked what form any such measures should take.²⁸

In 1997, the Commission rejected a call for *additional* technical quality standards (*i.e.*, beyond the "pass through" rule),²⁹ such as a rule that would require caption providers to follow voluntary industry technical guidelines published by the Electronic

²⁷ 47 C.F.R. § 79.1(c).

²⁸ NPRM at ¶ 20.

²⁹ Report and Order at ¶¶ 211-213.

Industry Association (EIA-608, Recommended Practice for Line 21 Data Service).³⁰ It is not clear from either the TDI Petition or the NPRM what “additional mechanisms and procedures” are requested by TDI or under consideration by the Commission.³¹

TDI asserts that technical problems are “pervasive” and “continue to occur with frequency.”³² However, in support of this broad assertion, TDI presents only a handful of anecdotal incidents, many of which are nearly ten years old,³³ or have no citation at all.³⁴ These isolated incidents, none of which occurred within the past two years, do not support TDI’s sweeping proposals for increased regulation.

While technical difficulties may have been more frequent in the early years of captioning – as one would expect them to have been – today, in the Networks’ experience, captioning is a reliable process that presents relatively few technical problems. Indeed, in the Networks’ experience, technical problems with the distribution of closed captions are no more frequent than other technical glitches that sometimes occur in the distribution of television programming, such as the loss of audio and/or video signals.

The Networks have implemented quality-control and monitoring systems to ensure that captions are delivered along with their audio and video signals. It is now a standard practice among the Networks to regularly and actively monitor the *outgoing* video signal, audio signal *and closed captions*, and those same signals as they are

³⁰ Report and Order at ¶ 210 and ¶ 213.

³¹ See TDI Petition at 26; NPRM at ¶ 20.

³² TDI Petition at 2, 26.

³³ TDI cited the Commission’s 1996 Report to Congress in support of its claims that “[c]aptions are turned off ten minutes for before the end of national network programming,” “[c]aptions appear on a national program in one locality, but not another,” and “[c]aptions are missing from repeats of previously aired captioned programming or have scrambled and unreadable captions.” See TDI Petition at 26-27.

³⁴ See TDI Petition at 26 (paras. 2 and 4).

received after transmission via satellite or fiber-optic cable. This process ensures that the Networks will immediately become aware of problems that might occur either in the creation of closed captions or in their transmission to distributors.

The Networks' monitoring process allows them to immediately begin troubleshooting and fixing any problem that might occur, and the Networks (and their captioning service providers) take this responsibility very seriously. For example, the third-party service provider that captions live programming for **CSN-PHL** and **CSN-MA** has established a 24-hour "hotline" for technical emergencies.

TDI's assertion that "video programming providers ... are not monitoring the captioning equipment on a continuous basis to ensure technical quality"³⁵ is simply inaccurate. Active and continuous monitoring of closed captions is a routine part of the Networks' technical operations, and as such, additional regulations are neither warranted nor appropriate.

C. The Commission Should Maintain the Current Complaint Procedures

The Commission asks whether it should revise Section 79.1(g) of its rules to (1) allow for shorter complaint and response times, and (2) permit complaints to be filed directly with the Commission without first complaining to the video programming distributor.³⁶ The Networks submit that the Commission's current complaint procedures should not be modified.

Section 79.1(g)(3) provides a reasonable timeframe to allow programming distributors and/or program networks to investigate and respond to complaints. In some cases, this will require an MVPD to consult not only with the program network that

³⁵ TDI Petition at 28.

³⁶ NPRM at ¶ 31.

provided the programming, but also with the production company that produced the programming, and/or the program licensing company from which library programming was obtained, and/or the captioning company that captioned the programming, and/or technical consultants who can investigate the nature and solution to the alleged captioning problem, a process that easily could consume all or a substantial part of the response period. Even after January 1, 2006, the timeframe currently set forth in the rules will be necessary to enable networks and distributors to investigate, coordinate and respond to any complaint involving the captioning of pre-rule and/or Spanish-language programming, for which captioning obligations will continue to be measured on a calendar quarter basis.³⁷

Moreover, although TDI presents a theoretical worst case scenario – “[f]our months could pass before the video programming provider is legally required to respond”³⁸ – it provides no actual examples of complaints that have taken that long to process. In fact, the Networks’ real-world experience with addressing complaints and inquiries is far different from the scenario depicted by TDI.

During the eight years that the captioning rules have been in force, the Networks have received no formal complaints and only a very few informal complaints or inquiries about closed captioning from their viewers. Indeed, **AZN**, **INSP**, **iLifetv**, **OLN**, **Style** and **TV One** have received no complaints or inquiries, formal or informal, from the public about closed captions.

In the limited number of instances in which an informal complaint or inquiry was received, the network responded promptly. Where inquiries related to the technical

³⁷ See 47 C.F.R. § 79.1(b)(2), (b)(3) and (b)(4).

³⁸ TDI Petition at 21.

delivery of captions, the Networks responded within hours or, at most, days. They did so because the Networks value each and every one of their viewers, and have strong market incentives to respond swiftly to their viewers' concerns. As the following examples illustrate, the Networks are highly responsive to their viewers' questions and concerns about closed captions:

- **G4** has received only one complaint about closed captioning since launch. It responded to the viewer and resolved the problem on the same day it received the complaint.³⁹
- **Golf** has received only two complaints about closed captioning, and responded to these within days.⁴⁰
- **CSN-MA** has received only one complaint (about a lack of captions on its high-definition channel) and resolved the problem within 30 days.
- **CSN-PHL** has received a handful of inquiries about the placement of captions on the television screen. Although it determined that a change was not required or warranted because captions were provided in the best manner possible, in each case it responded within five business days with an explanation of the status of its operation.
- **E!** received several requests to caption one of its popular programs, and responded by captioning the program less than one month later, even though it was not a program that **E!** was required to caption.

³⁹ Over the course of several e-mails, the problem (garbled captions) was determined to be with the consumer's equipment, and was rectified.

⁴⁰ One complaint was not about the amount or quality of the captioning, but instead concerned inappropriate language allegedly contained in closed captions on a program. The program was checked and found to contain no inappropriate language. The other inquiry involved a technical distribution issue, and was resolved within days by coordination with the distributor and the viewer.

Clearly, the Networks' practices present a very different picture than that painted by TDI, as the timeframes for the Networks' responses to these complaints and inquiries did not remotely approach TDI's theoretical, worst case scenario. However, the Networks certainly can imagine instances in which, quite appropriately, the time necessary to investigate and respond to a complaint or inquiry might be more substantial and could well consume all or a significant part of the timeframe set forth in the rules.

While the Networks do not believe that a change to Section 79.1(g)(3) is warranted or necessary, should the Commission elect otherwise, it should recognize that some complaints will require considerable time to investigate and resolve. For instance, if the Commission were to adopt non-technical quality standards, any complaints involving compliance with the standards likely would require a laborious -- and time-consuming -- review and analysis of the audio and captioning components of the programs at issue. The Commission's regulations should continue to allow video programming providers the time needed to conduct a thorough investigation and prepare an appropriate response.

The Networks' excellent record in responding to and resolving complaints and inquiries from the public also makes clear why the Commission should not amend Section 79.1(g)(1), which requires a complaint to be submitted to the video programming distributor before it is filed with the Commission. Although there have been a very few informal complaints and inquiries submitted directly to the Networks by viewers, *not even one* complaint has been filed with the Commission against any of the Networks. The Networks promptly responded to, and fully addressed, their viewers' concerns without the need for regulatory intervention or any waste of the Commission's valuable

resources. The Commission should maintain the rules' current emphasis on informal resolution of captioning issues.

D. The Commission Should Not Impose a System of "Punitive Penalties" as Requested by TDI

The Commission requested comment on whether it should establish specific "per violation" forfeiture amounts for non-compliance with the captioning rules.⁴¹ In its Petition, TDI proposed a base forfeiture amount of **\$8,000** per violation, with *each hour* of programming below the applicable benchmark being counted as a separate violation.⁴² TDI admits that it is seeking "a system of punitive penalties."⁴³ The Commission should reject this request because (1) there is no demonstrated reason to establish a base forfeiture amount, and (2) the amount proposed by TDI is grossly excessive.

As an initial matter, TDI's suggestion that there is widespread noncompliance with the captioning rules is without support, and in the Networks' experience, flat wrong. As discussed above, the Networks take the obligation to caption their programming very seriously, and are both exceeding the Commission's benchmark hourly requirements and ensuring that their programming is being captioned accurately and according to the highest possible quality standards. There is no reason for the Commission to implement the "punitive penalties" requested by TDI because this request is premised on an erroneous assumption.

⁴¹ Even though forfeitures would be imposed against distributors, not program networks, many networks' affiliation agreements typically would require the networks to indemnify their distributors for the amount of any forfeiture.

⁴² TDI Petition at 23.

⁴³ *Id.*

In any event, the Commission already has the ability to impose forfeitures,⁴⁴ and there is no need for the Commission to establish a base forfeiture amount. Indeed, when it established its forfeiture guidelines, the Commission stated, “[t]he forfeiture guidelines are intended as a guide for frequently recurring violations.”⁴⁵ Section 79.1 has required distributors and programming providers to caption programming since January 2000, and the Commission has found only three violations during the six year period, and *none* has been found in nearly four years.⁴⁶ Thus, it cannot be claimed that violations of Section 79.1 are “frequently recurring” such that a base forfeiture amount is warranted.

Tellingly, on each of the few occasions in which the Commission determined that a violation had occurred, it declined to impose forfeitures. On two occasions, it did so because the program networks agreed to caption an additional amount of programming in the future, a result that benefited persons with hearing disabilities.⁴⁷ The Commission should retain this discretion and flexibility for future adjudications, rather than adopt a one-size-fits-all formula of punitive financial penalties.⁴⁸

Moreover, given the complexity of the closed captioning rules, and the large number of different possible kinds of captioning errors, a base forfeiture amount is inappropriate and likely would prove to be unworkable and unfair, and legally

⁴⁴ See Report and Order at ¶ 243 (“if a violation has occurred, we may impose appropriate penalties, including for example, forfeitures”).

⁴⁵ *The Commission’s Forfeiture Policy Statement*, 12 FCC Rcd. 17087 at ¶ 53 (1997).

⁴⁶ See *Shop At Home Network*, 17 FCC Rcd. 1698 (2002); *Brick v. Comcast Cablevision of Md. and Courtroom Television Network*, 17 FCC Rcd. 570 (2002); *Letter to Discovery Comm., Inc.*, MB-ILR 02-2, 2002 FCC LEXIS 3739 (2002).

⁴⁷ See *Brick v. Comcast Cablevision of Md. and Courtroom Television Network*, 17 FCC Rcd. 570 (2002); *Letter to Discovery Comm., Inc.*, MB-ILR 02-2, 2002 FCC LEXIS 3739 (2002).

⁴⁸ For instance, even after the transition period has ended, some classes of programming (such as programs during the 2:00 AM to 6:00 AM period) will not be required to be captioned. Thus, in appropriate situations, the Commission would retain the ability to require the captioning of otherwise exempt programming.

indefensible. An occasional technical glitch that temporarily disrupts captions should not be penalized to the same degree as a willful failure to comply with the rules. Yet, under the approach advocated by TDI, both could result in the same financial penalty. The rules as currently enacted allow the Commission to assess the nature of a violation by taking into account the particular facts and circumstances on a case-by-case basis, and determine the appropriate forfeiture amount, if any.

In addition, the base forfeiture amount proposed by TDI is grossly excessive. TDI's proposed system of "punitive penalties" could have a crippling financial impact on programming networks for even a minor violation. If a network were unable to caption programming for only one day due to an equipment malfunction, for example, the resulting forfeiture imposed on the distributor, and passed through contractually to the network, would be **\$160,000** (20 hours x \$8,000), an amount that otherwise could greatly benefit persons with hearing disabilities by funding captions for scores of programs, rather than providing a windfall to the U.S. Treasury. Moreover, the nationally-distributed Networks are carried by hundreds of different distributors, and could potentially be required to indemnify *each distributor* for the amount of the forfeiture. For example, **G4** is carried by approximately 600 different distributors. If it failed to caption even one hour of programming, it theoretically could be liable for **\$4.8 million** in forfeitures (\$8,000 x 600 distributors) if the Commission were to adopt TDI's proposal.

TDI suggests that a base forfeiture amount of **\$8,000 per hour** of uncaptioned programming is appropriate because captioning violations are "akin to the Commission's current forfeiture amount for violation of the Commission's television programming

requirements.”⁴⁹ However, the Commission’s enforcement cases involving violations of the children’s television programming rules show that the Commission generally applies the base forfeiture amount for *multiple* violations of the rules, not each and every violation. For instance, in *Eagle Communications, Inc.*,⁵⁰ the Commission found 28 *separate violations* of 47 C.F.R. § 73.670 and imposed a *total* forfeiture of \$8,000. The Commission has imposed greater fines where it has found the violations to have been willful or egregious, such as in the recent forfeiture imposed against Viacom for violation of the children’s programming rules. However, even in that situation, it imposed a forfeiture of far less than \$8,000 per violation. Rather, the Commission imposed a forfeiture that equated to \$1,359 for each violation.⁵¹

The Commission has used \$8,000 as a *de facto* base forfeiture amount for violations of Section 79.2(b) (failure to caption emergency information) because such violations were found to be analogous to violations of rules relating to the failure to install and operate Emergency Alert System equipment.⁵² However, TDI proposes the same amount for violations of Section 79.1, which do not involve the captioning of emergency information and urgent matters of public safety, or egregious and willful violations.

For these reasons, the Commission should reject TDI’s request for a system of punitive penalties.

⁴⁹ TDI Petition at 23, note 38.

⁵⁰ 13 FCC Rcd. 8526 (1998).

⁵¹ *Viacom International, Inc.*, 19 FCC Rcd. 20802 (2004).

⁵² See, e.g., *ACC Licensee, Inc.*, 20 FCC Rcd. 9832 at ¶ 14 (2005).

E. The Commission Should Not Impose Burdensome Regulatory Reporting Requirements

The Commission has requested comment on whether distributors should be required to file “compliance reports” and, if so, how often they should be filed.⁵³ TDI asserts that absent such a reporting requirement there is no mechanism by which consumers can verify that a particular programming provider is in compliance with the captioning requirements.⁵⁴ That assertion is untrue. Consumers can, and do, contact distributors and programming providers to inquire about compliance with the captioning rules. In addition, to the extent that confusion exists about the type and amount of programming that must be captioned, the Commission has created a “FAQ” sheet to help explain to consumers the captioning requirements, including a list of the programming that does not have to be captioned. Moreover, although compliance may have been somewhat difficult to ascertain during the transitional period, when less than 100 percent of English-language programming had to be captioned, starting in January 2006, nearly all English-language programming will be required to be captioned, and the process of ascertaining compliance with the captioning rules will be a far simpler matter.⁵⁵ Thus, TDI proposes a costly and administratively cumbersome “solution” to a problem that does not exist.

Moreover, TDI suggests that after January 2006, reporting requirements may be necessary for consumers to police compliance for non-new, English language programming – *i.e.*, programming that will not be fully captioned in 2006. The Commission asks whether “reports should include information relating to non-exempt

⁵³ NPRM at ¶ 43.

⁵⁴ TDI Petition at 19.

⁵⁵ As of January 2006, the only non-apparent questions with respect to compliance would involve the narrow classes of exempt programming that are not required to be fully captioned.

programming or only information pertaining to pre-rule non-exempt and Spanish-language programming.”⁵⁶ However, much of the programming that will remain uncaptioned in January 2006 will be exempt programming carried by smaller, less established networks and start-up networks. Indeed, in adopting the exemptions, the Commission expressly recognized the need to balance the desirability of captioning with the fact that in certain circumstances the provision of closed captioning would be too economically burdensome.⁵⁷ Any rule that were to require more reporting requirements for programming subject to less stringent captioning requirements would thus disproportionately burden the very programming the Commission sought to protect.

TDI asserts that it “fear[s] that the lack of benchmark reporting requirements has created a situation where many providers are unaware that they are out of compliance with the benchmarks.”⁵⁸ However, as discussed above, the Networks can unequivocally state that, in their experience, this assertion is patently false. The Networks are fully aware of their obligations under the captioning rules, and every one of the Networks is in compliance with those rules.

Although the Commission did not request comment on whether program networks should be required to file compliance reports – since networks are not directly subject to the rules – the Networks have a strong interest in this matter because any regulatory requirement imposed on distributors ultimately will flow through to the Networks. The Networks already certify their compliance with the closed captioning rules to distributors on a quarterly basis in accordance with their affiliation agreements. This certification process has been efficient and effective for distributors, program networks and the public.

⁵⁶ NPRM at ¶ 43.

⁵⁷ Report and Order at ¶ 143.

⁵⁸ TDI Petition at 18.

However, any new regulatory obligation that would require more frequent or more detailed compliance reports would simply add to the already considerable costs and administrative burden of captioning. Resources that could be used to caption programming would instead be devoted to paperwork and bureaucracy.

The FCC rejected a reporting obligation in the Report and Order, reasoning that “specific recordkeeping or filing requirements would be unnecessarily burdensome and administratively cumbersome.”⁵⁹ On reconsideration, the Commission again rejected a request for compliance reports.⁶⁰ TDI asks the Commission to revisit this issue yet again. Because TDI’s sweeping and unsupported claims of widespread noncompliance are unfounded, there is no need for the Commission to revisit this issue. The only factual change that has occurred since 1997 is that distributors now carry many more programming services. As a result, the cost and administrative burden identified by the Commission in 1997 would be even greater today. Accordingly, the current rules should not be amended.

F. The Networks Anticipate That the Supply of Captioners Will Be Limited, and Costs Will Rise Significantly in 2006

The Commission requested comment on the supply of captioners available for real-time and pre-recorded captioning.⁶¹ The Networks generally have seen their captioning costs rise steadily over the past several years. The Networks anticipate that costs for real-time captioning will increase significantly in 2006, when almost all new English language programming will be required to be captioned, because the supply of

⁵⁹ Report and Order at ¶ 244.

⁶⁰ See *Closed Captioning and Video Description*, Order on Reconsideration, 13 FCC Rcd. 19973 at ¶ 118 (1998) (“We will not adopt recordkeeping or reporting requirements as they would impose unnecessary administrative burdens on video programming distributors and the Commission.”).

⁶¹ NPRM at ¶ 49.

qualified captioners will not be able to keep pace with the increase in demand. If adopted, the rule changes proposed by TDI would greatly exacerbate this problem by increasing the cost and regulatory burden of captioning.

III. CONCLUSION

As the Commission predicted in 1997, closed captions now are an integral part of the programming package the Networks deliver to the television viewing public. Each of the Networks is providing captioning in compliance with the Commission's rules, and most are going well beyond their regulatory obligation to caption. The Networks have strong market incentives to deliver high-quality, reliable captions as part of their programming, and each consistently has done so.

For the reasons discussed above, the various rule changes proposed by TDI are unwarranted, and would simply add to the cost and administrative burden of captioning, while providing few, if any, benefits to hearing-impaired television viewers. There is no reason for the Commission to revise its carefully crafted and balanced captioning rules, which have served the public well since their inception. Thus, the Commission should reject the rule changes sought by TDI.

Respectfully submitted,

**AZN TELEVISION
CASINO & GAMING TELEVISION
COMCAST SPORTSNET (MID ATLANTIC)
COMCAST SPORTSNET (PHILADELPHIA)
E! ENTERTAINMENT TELEVISION
G4 – VIDEOGAME TV
THE GOLF CHANNEL
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November 10, 2005

Attachment A



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4100 East Dry Creek Road
Centennial, Colorado 80122
www.azntv.com

AZN Television is the network for Asian America. The channel's primetime programming targets the fast-growing, young, affluent and English-speaking Asian American community with original programming produced in the U.S. Rounding out primetime are some of the most popular movies, dramas, anime and music shows out of Asia. Daytime programming features drama series and timely news programs direct from Asia's leading broadcasters. Weekends are dedicated to programming for South Asian viewers.

AZN Television is a service of International Networks, which also provides 15 premium cable television channels from various international sources in the languages of the country of origin. International Networks is the trade name of International Networks, LLC, a wholly-owned company of Comcast Corporation.

- Number of Subscribers: 12.5 Million
- Launch Date: July 1990



Casino & Gaming Television

3960 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89109

www.cgtv.com

“Your Best Bet for the World of Gaming!”

Casino & Gaming Television (CGTV) is the first 24-hour entertainment and information channel devoted to the millions of gaming lifestyle enthusiasts. CGTV is a mirror on the leisure phenomenon of this generation, an all-day VIP pass to the fun, excitement and aspirational lifestyle that is on every American's doorstep. CGTV is expected to launch in the United States in the near future and offer original programming on casino and gaming events and tournaments in exciting destinations worldwide, as well as instruction and information about games. The Network will also bring the music, magic, variety and specialty shows found on casino stages and open the world of casino resort destinations to its viewers and share experiences and entertainment that viewers might not otherwise experience.

- Service launched in Canada in 2005.
- Service is expected to launch in the United States in the near future.



Comcast SportsNet (Philadelphia)

3601 Broad Street

Philadelphia, Pennsylvania 19148

<http://philadelphia.comcastsportsnet.com>

Comcast SportsNet (Philadelphia) is a 24-hour a day regional sports network serving the greater Philadelphia area, featuring unsurpassed coverage of and programming involving Philadelphia Flyers hockey, Philadelphia 76ers basketball and Philadelphia Phillies baseball games, collegiate events (including the Atlantic-10), sports talk, and other sporting events and topics of regional and national interest, as well as programming from Fox Sports Net. Select games are offered by the network in high definition.

- Date Service Began: October 1997
- Number of Subscribers: 3 million



Comcast SportsNet (Mid-Atlantic)

7700 Wisconsin Avenue

Bethesda, Maryland 20814

<http://midatlantic.comcastsportsnet.com>

Comcast SportsNet (Mid-Atlantic) is a 24-hour a day regional sports network serving the Mid-Atlantic, featuring unsurpassed coverage of and programming involving Baltimore Orioles baseball, Washington Capitals hockey, Washington Wizards basketball, D.C. United soccer, collegiate events (including the ACC and CAA), and other sporting events and topics of regional and national interest, as well as Fox Sports Net programming. Select games are offered by the network in high definition.

- Date Service Began: April 1994 as "Home Team Sports," re-branded Comcast SportsNet in April 2001
- Number of Subscribers: 4.7 million



NETWORKS

E! Entertainment Television

5750 Wilshire Boulevard

Los Angeles, California 90036-3709

www.eonline.com

E! Entertainment is the world's largest producer and distributor of entertainment news and lifestyle-related programming. The Network operates E! Entertainment Television, the 24-hour network with programming dedicated to the world of entertainment; The Style Network, the 24-hour network where life gets a new look; and E!Online, located at www.eonline.com. E! Entertainment Television features programming dedicated to the world of entertainment, offering compelling celebrity interviews, talk shows, news, docudramas, behind-the-scenes specials, comedy, movie previews and the most comprehensive coverage of the entertainment industry's awards shows.

- Date Service Began: June 1990
- Number of Subscribers: 86 million



G4 – videogame tv
12100 West Olympic Boulevard, Suite 200
West Los Angeles, California 90064
www.g4tv.com

G4 – videogame tv is dedicated to video games and the gaming lifestyle. Targeting young adults, 12-34 year old, G4 is on the air 24 hours, seven days a week, with predominantly original programming. Series and specials focus on the latest information about electronic games, including news, game previews and reviews, “making of” documentaries, tips and tricks, competitions, celebrity players and special events.

- Date Service Began: April 2002
- Number of Subscribers: 53 million



The Golf Channel

7580 Commerce Center Drive
Orlando, Florida 32819-8947
www.thegolfchannel.com

The Golf Channel is the first and only television network devoted exclusively to golf, 24 hours a day. Golf Channel viewers have access to more live golf coverage than all other networks combined in addition to private instruction from golf's top teaching professionals and up-to-the minute golf news and statistics every day.

The Network brings an extensive blend of PGA Tour, Champions Tour, LPGA, Nationwide Tour, USGA, PGA of America, European Tour, Canadian Tour and PGA Tour Australasia competition; instruction with world renowned teaching professionals; *Golf Central*, an award-winning nightly golf news show; *Golf Talk*, a show featuring today's and yesterday's golf heroes and personalities, such as Arnold Palmer; *The Sprint Pre and Post Game*, a personality driven show featuring a preview and recap of the week's tournament action; celebrity interviews; video tours of the world's great courses and specials.

- Date Service Began: January 1995
- Number of Subscribers: 68 million



Inspirational Life Television
7910 Crescent Executive Drive, 5th Floor
Charlotte, North Carolina 28217
www.ilifetv.com

Inspirational Life Television is a 24-hour a day Christian lifestyles network bringing its viewers practical and inspirational programs on better finances, health, families, relationships, marriages and more. Inspirational Life Television is the best in programming for children of all ages, and includes a special block for teens, exclusive and original music concerts, movies, sports, documentaries and exciting family entertainment. The Network also dedicates 45 hours a week to the growing Hispanic community.

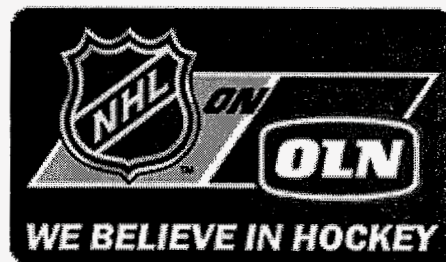
- Date Service Began: June 1997
- Number of Subscribers: 7 million



The Inspiration Network
7910 Crescent Executive Drive, 5th Floor
Charlotte, North Carolina 28217
www.insp.com

The Inspiration Network is a 24 hour-a-day Judeo-Christian network with unique programming for viewers who embrace inspirational values. The Network features original and exclusive music, children's programs and a wide variety of different ministry programming with a true diversity and ethnic balance. The Inspiration Network features programming on marriage and family, and life-enriching programs that positively impact people's lives emotionally and spiritually.

- Date Service Began: September 1991
- Number of Subscribers: 22 million



Outdoor Life Network
281 Tresser Boulevard, 9th Floor
Stamford, Connecticut 06901
www.OLNtv.com

OLN is the leader in competitive and adrenaline-charged content. Now approximately 63 million homes, OLN is the cable home of the National Hockey League and best-in-class events like *The Tour de France*, The America's Cup, Professional Bull Riders, the Boston Marathon and USSA Skiing. The network offers unique programming in four primary areas: Action Sports, Field Sports, Bulls & Rodeo and Awe-Inspiring Series, and is the exclusive home of *Survivor* in syndication.

- Date Service Began: July 1995
- Number of Subscribers: 63 million



Style Network

5750 Wilshire Boulevard
Los Angeles, California 90036

www.stylenetwork.com

"Where Life Gets a New Look"

Style Network, as part of the E! Networks, is the only 24-hour network that features a full slate of original series and specials that run the gamut of the lifestyle genre. The Network brings to its viewers the very latest looks in fashion, the newest trends in hair and makeup, top designers, models of the moment, the most beautiful homes, and unique ideas for entertaining and travel.

- Date Service Began: October 1998
- Number of Subscribers: 41 million



LIFESTYLE & ENTERTAINMENT
TELEVISION

TV One
1010 Wayne Avenue
Silver Spring, Maryland 20910
www.tv-one.tv

TV One is a new cable/satellite television network, programming primarily to African American adults. TV One offers a broad range of lifestyle and entertainment-oriented programming that respects their values and reflects their intellectual and cultural diversity.

TV One's goal is to be distributed on the most widely available cable and satellite service level in markets where African-Americans represent a significant segment of the population. With an engaging mix of original and acquired programming from key entertainment genres, TV One's programming provides a sophisticated alternative for adult African American viewers.

- Date Service Began: January 2004
- Number of Subscribers: 22.7 million

CERTIFICATE OF SERVICE

I, Sharon K. Mathis, a secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that true and correct copies of the Joint Closed Captioning Comments have been sent as follows:

1. By electronic filing on this 10th day of November 2005 with the Federal Communications Commission via the Internet at <http://www.fcc.gov/e-file/ecfs.html>.
2. By messenger to the following:

Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Daniel Gonzalez
Chief of Staff
FCC Chairman Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Lauren Belvin
Acting Senior Legal Advisor
Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jordan Goldstein
Senior Legal Advisor
Commissioner Michael J. Copps
Federal Communications Commission
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Kathleen Q. Abernathy
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Steve Garner
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Amelia Brown
Federal Communications Commission
Disability Rights Office
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Washington, D.C. 20554

Sonia Greenaway-Mickle
Federal Communications Commission
Media Bureau
445 12th Street, S.W., Rm. 3-A440
Washington, D.C. 20554

A handwritten signature in cursive script, reading "Sharon K. Mathis". The signature is written in dark ink and is positioned above a horizontal line.

Sharon K. Mathis